



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

**Therese McMurry Hewlett
Willow Lodge
Lahinch
Co. Clare
V95 H393**

RL5660 3324 6 IE

7th June, 2022

Section 5 referral Reference R22-32 – Therese McMurry Hewlett

Was the driveway constructed by Michael Malone and Delia MacNamara alongside the west elevation of their dwelling at Ballyvryslaun Townland, Liscannor, Co. Clare development, and if so, is it exempted development?

A Chara,

I refer to your application received on 13th May 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

Attached is the Planning Authority's declaration as reached on this case.

It appears that the works are not exempted development and therefore require the benefit of planning permission.

Notwithstanding same, the works have been carried out for some time (more than seven years ago) and as such the Planning Authority is statute barred from enforcement action

Where a declaration is issued by the Planning Authority, any person issued with a declaration, may on payment to an Bord Pleanála of the required fee, refer a declaration for review by An Bord Pleanála within 4 weeks of the date of the issuing of the declaration. Details on making such appeal are available on the Board's website at www.pleanala.ie

Mise, le meas

**Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate**

An Roinn Pleanála
An Stiúrthóireacht Forbairt Gheilleagrach
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department
Economic Development Directorate
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



**DECLARATION ISSUED UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)**

Reference No.: R22-32



**Comhairle Contae an Chláir
Clare County Council**

Section 5 referral Reference R22-32

Was the driveway constructed by Michael Malone and Delia MacNamara alongside the west elevation of their dwelling at Ballyvryslau Townland, Liscannor, Co. Clare development, and if so, is it exempted development?

AND WHEREAS, Therese McMurry Hewlett has requested a declaration from Clare County Council on the said question.

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

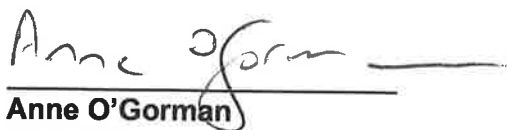
- (a) Sections 2, 3 and 4 of the Planning and Development Act, as amended, and
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001 (as amended)
- (c) Classes 5 and 6 of Schedule 2, Part 1 of the Planning and Development Regulations, 2001 (as amended)
- (d) The details and particulars as submitted with the referral and the planning history of the site.

And whereas Clare County Council has concluded:

- (a) The construction of the subject driveway and associated entrance involved the carrying out of works and is, therefore, development under section 3 of the Planning and Development Act, 2000, as amended;
- (b) The driveway and associated entrance would generally come within the provisions of Classes 5 and 6 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, however it is considered that the restrictions on exemptions as per Article and 9 (1) (ii) and (iii) apply whereby the road width to the front of the dwelling exceeds 4m and the provision of a second entrance would endanger public safety by reason of a traffic hazard.

THEREFORE: The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

The proposed development consisting of the construction of an entrance and driveway at Ballyvrislaun, Liscannor, Co. Clare is development, and is not exempted development as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

A handwritten signature in black ink, appearing to read "Anne O'Gorman", is written over a horizontal line.

Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

7th June, 2022

CLARE COUNTY COUNCIL

SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED

DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT

Chief Executive's Order No: 79916

Reference Number: R22-32

Date Referral Received: 13th May 2022

Name of Applicant: Therese McMurry Hewlett

Location of works in question: Ballyvryslaun Townland, Liscannor, Co. Clare

Section 5 referral Reference R22-32 – Therese McMurry Hewlett

Was the driveway constructed by Michael Malone and Delia MacNamara alongside the west elevation of their dwelling at Ballyvryslaun Townland, Liscannor, Co. Clare development, and if so, is it exempted development?

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2, 3 and 4 of the Planning and Development Act, as amended, and
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001 (as amended)
- (c) Classes 5 and 6 of Schedule 2, Part 1 of the Planning and Development Regulations, 2001 (as amended)
- (d) The details and particulars as submitted with the referral and the planning history of the site.

AND WHEREAS Clare County Council has concluded:

- (a) The construction of the subject driveway and associated entrance involved the carrying out of works and is, therefore, development under section 3 of the Planning and Development Act, 2000, as amended;
- (b) The driveway and associated entrance would generally come within the provisions of Classes 5 and 6 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, however it is considered that the restrictions on exemptions as per Article and 9 (1) (ii) and (iii) apply whereby the road width to the front of the dwelling exceeds 4m and the provision of a second entrance would endanger public safety by reason of a traffic hazard.

ORDER: Whereas by Chief Executive's Order No. HR 152 dated 9th April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers

conferred on him by Section 154 of the Local Government Act 2001, delegate to Gareth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein,

NOW THEREFORE pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Gareth Ruane, Senior Executive Planner, hereby declare that the construction of an entrance and driveway at Ballyvrislaun, Liscannor, Co. Clare is development, and is not exempted development.

Signed:



GARETH RUANE
SENIOR EXECUTIVE PLANNER A-6

Date: 7th June, 2022

Tadhg Holmes

From: Ann O'Gorman
Sent: Tuesday 7 June 2022 15:47
To: Tadhg Holmes
Subject: FW: R 22/32

From: Gareth Ruane <GRuane@clarecoco.ie>
Sent: Tuesday 7 June 2022 15:44
To: Ann O'Gorman <AOGorman@clarecoco.ie>
Cc: James Griffin <jgriffin@clarecoco.ie>
Subject: R 22/32

Wording of order:

WHEREAS a question has arisen as to whether or not the construction of an entrance and driveway along the western site of the existing dwelling is or is not development, and if so is it exempted development.

AND WHEREAS Clare County Council in considering this referral had particular regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act, as amended, and
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001 (as amended)
- (c) Classes 5 and 6 of Schedule 2, Part 1 of the Planning and Development Regulations, 2001 (as amended)
- (d) The details and particulars as submitted with the referral and the planning history of the site.

AND WHEREAS Clare County Council has concluded that:

- (a) The construction of the subject driveway and associated entrance involved the carrying out of works and is, therefore, development under section 3 of the Planning and Development Act, 2000, as amended;
- (b) The driveway and associated entrance would generally come within the provisions of Classes 5 and 6 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, however it is considered that the restrictions on exemptions as per Article and 9 (1) (ii) and (iii) apply whereby the road width to the front of the dwelling exceeds 4m and the provision of a second entrance would endanger public safety by reason of a traffic hazard.

NOW THEREFORE Clare County Council in exercise of its powers conferred on it by Section 5(2) of the Planning & Development Act 2000 (as amended) hereby decides that the construction of an entrance and driveway at Ballyvrislaun, Liscannor is development, and is not exempted development.

Advice note to Referral Party (McMurry Hewlett):

Attached is the Planning Authority's declaration as reached on this case.

It appears that the works are not exempted development and therefore require the benefit of planning permission. Notwithstanding same, the works have been carried out for some time (more than seven years ago) and as such the Planning Authority is statute barred from enforcement action.

Garreth Ruane

Senior Executive Planner

Planning and Economic Development

Clare County Council, Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2

T: 065 6846227 | E: gruane@clarecoco.ie | W: www.clarecoco.ie



COMHAIRLE CONTAE AN CHLÁIR
CLARE COUNTY COUNCIL

**CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT**

FILE REF:	R22-32
APPLICANT(S):	Thérèse McMurray Hewlett
REFERENCE:	Was the driveway constructed by Michael Malone and Della McNamara alongside the western elevation of their dwelling at Ballyvryslaun Townland, Liscannor, Co. Clare development, and if so is it exempted development?
LOCATION:	Ballyvryslane, Liscannor, Co. Clare
DUE DATE:	8 th June 2022

Site Location

The site is occupied by a detached single storey dwelling. The application site is located along the L5146 in the town of Ballyvryslaun, approximately 3.2km north of Lahinch. It is bound to the north by the public road and to the east by another detached dwelling and to the west and south by open fields.

Recent Onsite Planning History

22-334 – Outcome Pending – Michael & Della Malone – to construct a sunroom extension and associated site works.

08/1500 – Granted – Michael Malone – to retain garage adjacent to existing house.

P96-1033 – Granted – Michael Malone & Della McNamara – permission to construct dwelling house, garage and septic tank

Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Thérèse McMurray Hewlett.

The applicant is seeking a Section 5 Declaration as to whether the driveway constructed alongside the western elevation of the dwelling ever got planning permission or was planning permission granted. It appears that the question as asked does not clearly state the nature of the development however I think it can be more appropriately framed as:

“whether or not the construction of an entrance and driveway along the western site of the existing dwelling is or is not development, and if so is it exempted development development”.

Statutory Provisions

Planning and Development Act, 2000 (as amended)

In order to assess this proposal, regard has to be had to the *Planning and Development Act 2000, as amended*.

S.3.(1) In this Act, “development” means, except where the context otherwise requires, **the carrying out of any works on, in, over or under land** or the making of any material change in the use of any structures or other land.

‘Works’ are defined in Section 2 of the *Planning and Development Act 2000, as amended* as follows:

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Planning & Development Regulations, 2001, (as amended) - Schedule 2, Part 1, Class 5

The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.
2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.
3. No such structure shall be a metal palisade or other security fence.

Planning & Development Regulations, 2001, (as amended) - Schedule 2, Part 1, Class 6

(a) The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house.

(b) Any works within the curtilage of a house for—

(i) the provision to the rear of the house of a hard surface for use for any purpose incidental to the enjoyment of the house as such, or,

(ii) the provision of a hard surface in the area of the garden forward of the front building line of the house, or in the area of the garden to the side of the side building line of the house, for purposes incidental to the enjoyment of the house as such.

The level of the ground shall not be altered by more than 1 metre above or below the level of the adjoining ground.

Provided that the area of the hard surface is less than 25 square metres or less than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, whichever is the smaller,

or

if the area of the hard surface is 25 square metres or greater or comprises more than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, it shall be constructed using permeable materials or otherwise allow for rainwater to soak into the ground.

Planning & Development Regulations, 2001, (as amended) – Part 2 – Restrictions on exemption

9.

(1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

- i. contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act
- ii. consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.
- iii. endanger public safety by reason of traffic hazard or obstruction of road users.

Assessment

- At the outset it should be noted that the subject works have been carried out at least since 2009 (from examination of google streetview) and therefore the Planning Authority are statute barred from taking any enforcement action with respect of the subject works.
- In addition there is currently a live planning application on the subject site where further information has been sought in terms of legal interest – pl ref 22/334 refers. I note that the referral party in this instance has made a third party submission to that application.
- In terms of the actual works as carried out the question relates to whether the driveway and entrance fall within the exempted development provisions. There are exemptions as set out above under Class 5 for the construction of a gate or gateway. Also Class 6 allows for the provision of hard standing areas within and to the front curtilage of a dwelling house.

- It appears that the subject works fall within the above provisions. However the works are also subject to the restrictions on exemptions as per Article 9. In this instance I note that the road width to the front of the house is greater than 4m and therefore the restrictions on Article 9 (1) (ii) applies. In addition the provision of a second entrance is of a concern in terms of traffic safety and I note that sight distances to the west are somewhat restricted by reason of the adjoining hedgerow. Therefore the restrictions as per Article 9 (1) (iii) also apply.
- In light of the above therefore it appears that the subject works cannot not avail of the exempted development provisions of the regulations and an order to this effect is set out below.
- It is also recommended that the referral party be advised that the works are statute barred from enforcement action.

Recommendation

It is recommended that the following issue in respect of this Section 5 declaration:

WHEREAS a question has arisen as to whether or not the construction of an entrance and driveway along the western site of the existing dwelling is or is not development, and if so is it exempted development.

AND WHEREAS Clare County Council in considering this referral had particular regard to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act, as amended, and*
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001 (as amended)*
- (c) Classes 5 and 6 of Schedule 2, Part 1 of the Planning and Development Regulations, 2001 (as amended)*
- (d) The details and particulars as submitted with the referral and the planning history of the site.*

AND WHEREAS Clare County Council has concluded that:

- (a) The construction of the subject driveway and associated entrance involved the carrying out of works and is, therefore, development under section 3 of the Planning and Development Act, 2000, as amended;*
- (b) The driveway and associated entrance would generally come within the provisions of Classes 5 and 6 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, however it is considered that the restrictions on exemptions as per Article and 9 (1) (ii) and (iii) apply whereby the road width to the front of the dwelling exceeds 4m and the provision of a second entrance would endanger public safety by reason of a traffic hazard.*

NOW THEREFORE Clare County Council in exercise of its powers conferred on it by Section 5(2) of the Planning & Development Act 2000 (as amended) hereby decides that the construction of an entrance and driveway at Ballyvrilaun, Liscannor is development, and is not exempted development.

Advice note to Referral Party (McMurry Hewlett):

Attached is the Planning Authority's declaration as reached on this case.

It appears that the works are not exempted development and therefore require the benefit of planning permission.

Notwithstanding same, the works have been carried out for some time (more than seven years ago) and as such the Planning Authority is statute barred from enforcement action.



Graduate Planner
Date: 07/06/2022



Senior Executive Planner
Date: 07/06/2022

P07

**CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR**

Planning Department,
Economic Development Directorate,
Clare County Council,
New Road, Ennis,
Co. Clare.
V95DXP2

Telephone No. (065) 6821616
Fax No. (065) 6892071
Email: planoff@clarecoco.ie
Website: www.clarecoco.ie



COMHAIRLE CONTAE AN CHLÁIR
CLARE COUNTY COUNCIL

**REQUEST FOR A DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT
(Section 5 of the Planning & Development Act 2000 (as amended))**

FEE: €80

This following form is a non-statutory form which has been prepared by Clare County Council for the purpose of obtaining the necessary information required for a declaration to be made under Section 5 by the Planning Authority

1. CORRESPONDENCE DETAILS.	
(a) Name and Address of person seeking the declaration	<p>Therese McMurry Heckett</p> <p>WILLOW LODGE</p> <p>CAHINGH</p> <p style="text-align: right;">Eircode: V95H393</p>
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	<p> </p> <p> </p> <p> </p> <p style="text-align: right;">EIRCODE: _____</p>

2. DETAILS REGARDING DECLARATION BEING SOUGHT

(a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT
Note: only works listed and described under this section will be assessed.

Sample Question: *Is the construction of a shed at 1 Main St., Ennis development and if so is it exempted development?*

WAS THERE PLANNING GRANTED FOR TWO
DRIVEWAYS ON PLANNING APPLICATION 2/8/1996
P96 - 1033 MICHAEL MALONE & DELLA MACNAMARA

(b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.

QUERY - A DRIVEWAY WAS BUILT BY
MICHAEL MALONE AND DELLA MACNAMARA
ALONGSIDE THE LOT ELEVATION OF THEIR
DWELLING - WAS PLANNING GRANTED
FOR THU - OR APPLIED FOR?

(c) List of plans, drawings etc. submitted with this request for a declaration:
(Note: Please provide a site location map to a scale of not less than 1:2500 based on Ordnance Survey map for the areas, to identify the lands in question)

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	BALLYURISLAWN TLD LISCANNOR COUNTY CLARE
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	OWNER OF THE SITE WHERE DRIVEWAY WAS BUILT ILLEGALLY (TRESPASS)
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question: <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	NO
(f) Are you aware of any enforcement proceedings connected to this site? If so please supply details:	NO
(g) Were there previous planning application/s on this site? If so please supply details:	FOLIO YES P96-1033 (2/08/96)
(h) Date on which 'works' in question were completed/are likely to take place:	late 1990's approx

SIGNED: Thom Hewlett (McMurray) DATE: 13/05/2022

GUIDANCE NOTES

This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority

- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration under Section 5 must be accompanied by the required fee of €80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

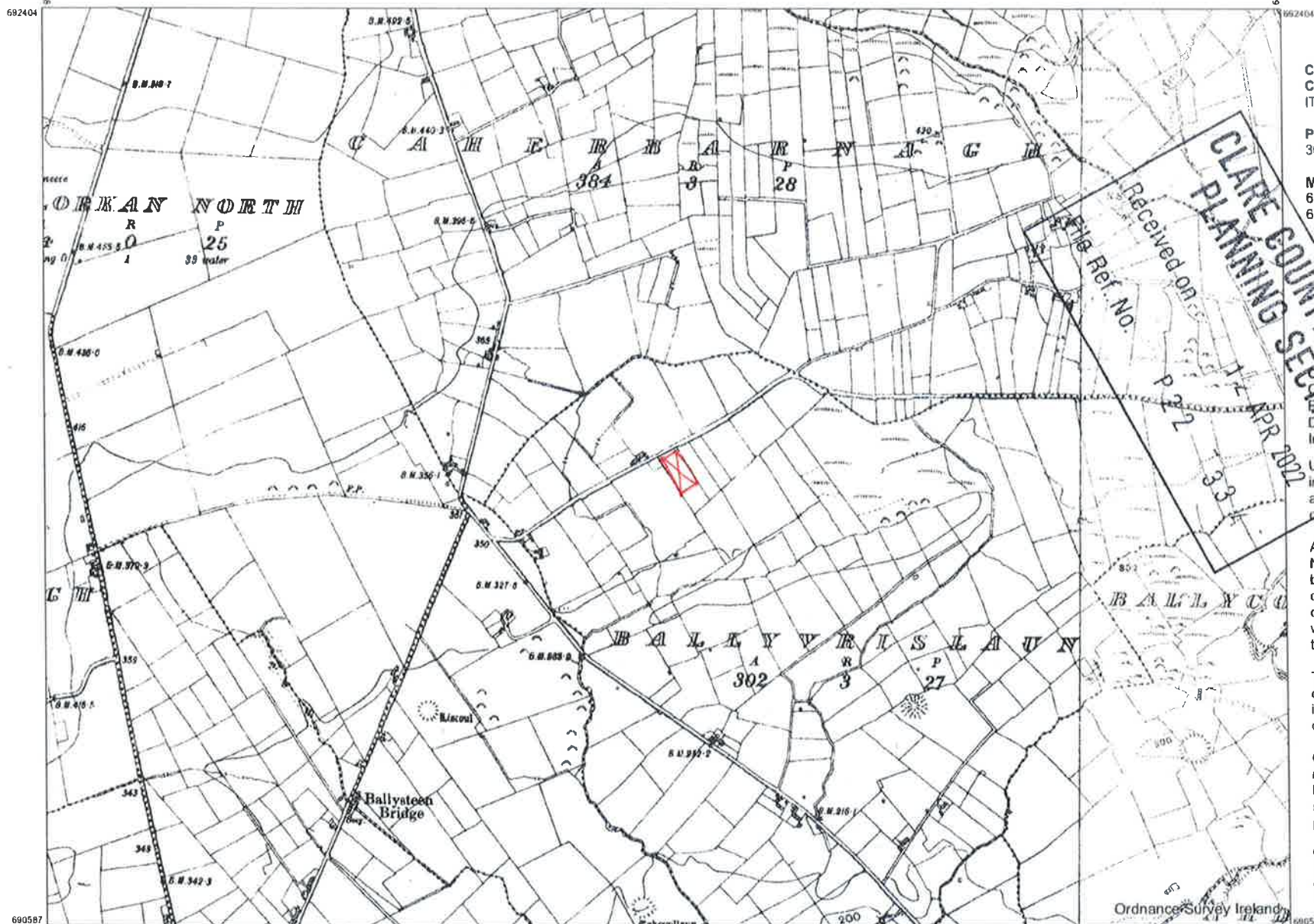
Planning Department,
Economic Development Directorate,
Clare County Council
Aras Contae an Chlair,
New Road,
Ennis,
Co. Clare
V95DXP2

- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information on the question which has arisen and on which the declaration is sought

FOR OFFICE USE ONLY

Date Received:	Fee Paid:
Date Acknowledged:	Reference No.:
Date Declaration made:	CEO No.:
Decision:	

Site Location Map



CENTRE COORDINATES:
 ITM 505459,691496

PUBLISHED: 30/03/2022

ORDER NO.: 50259230_3

MAP SERIES: 6 Inch Raster
6 Inch Raster

MAP SHEETS: CE014+008A
CE015

Received on: 17 APR 2022

File Ref. No. P 22 33

**CLARE COUNTY COUNCIL
 PLANNING SECTION**

COMPILED AND PUBLISHED BY:
 Ordnance Survey Ireland,
 Phoenix Park,
 Dublin 8,
 Ireland

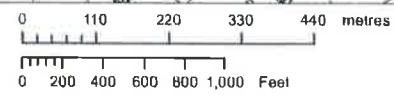
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LEGEND:
<http://www.osi.ie>;
 search 'Large Scale Legend'

AN CHLÁIR

Clare County Council
Aras Contae an Chlair
New Road
Ennis
Co Clare



13/05/2022 10:33:47

Receipt No. L1CASH/0/332506
**** REPRINT ****

THERESE MCMURRY HEWLETT
WILLOW LODGE
LAHINCH
CO CLARE
R22-32

SECTION 6 REFERENCES 80.00
GOODS 80.00
VAT Exempt/Non-vatable

Total : 80.00 EUR

AN CHLÁIR

Tendered :
CREDIT CARDS 80.00

Change :



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